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of part performance refer to and result from the agreement, and the agreement must have been so far executed that a refusal of full execution will operate as a fraud on the party seeking enforcement.

[Ed. Note.—For other cases, see *Frauds, Statute of*, Cent. Dig. §§ 287-292; Dec. Dig. § 129.* 6 Va.-W. Va. Enc. Dig. 531, id. 539; 8 id. 386; 12 id. 537, 545, 678.]

3. Frauds, Statute of (§ 129*)—Verbal Agreement for Partition of Real Estate—Part Performance.—Plaintiff and defendant purchased the interests of their brothers and sisters in land of their deceased father, pursuant to an oral agreement that adjacent land, previously purchased by defendant alone, should be considered a part of the father's land for partition between plaintiff and defendant. Plaintiff furnished his share of the money for the purchase of the interests, the cultivation of the land, and the raising of crops, the proceeds of which went to the support of plaintiff and defendant, the surplus being used to pay for the interests purchased, and the interests so purchased were paid wholly out of the crops raised by the joint labor of plaintiff and defendant. Held, that the acts of performance by plaintiff did not take the agreement out of the statute of frauds (Code 1904, § 2840), and it was not enforceable.

[Ed. Note.—For other cases, see *Frauds, Statute of*, Cent. Dig. §§ 287-292; Dec. Dig. § 129.* 12 Va.-W. Va. 537.]

4. Specific Performance (§ 64*)—Verbal Agreement for Partition—Enforcement.—The evidence did not show a state of facts justifying enforcement of the agreement, within the rule that, to justify the enforcement of a parol contract for partition, the contract must have been so far executed that a refusal of full execution will operate as fraud on the party seeking enforcement.

[Ed. Note.—For other cases, see *Specific Performance*, Dec. Dig. § 64.*]

Appeal from Circuit Court; Roanoke County.

Suit by Lewis J. Martin against Thomas H. Martin. From a decree for plaintiff, defendant appeals. Reversed and remanded.

A. E. King, for appellant.

Horace M. Fox & Hall, Woods & Jackson, for the appellee.

CAMPBELL v. DOTSON.

Nov. 16, 1911.

[72 S. E. 688.]

Partition (§ 8*)—By Act of Parties—Deed—Validity.—A partition deed is not invalidated as to the parties signing it because it was not signed by all the parties to it, where all the shares were verbally agreed upon, and the allottees entered upon their respective al-

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

lotments and made improvements, and one of the parties had conveyed his interest according to the metes and bounds agreed upon.

[Ed. Note.—For other cases, see Partition, Cent. Dig. § 19; Dec. Dig. § 8.* 10 Va.-W. Va. Enc. Dig. 771, 772.]

Appeal from Circuit Court, Buchanan County.

Bill by Shade Dotson against A. W. Campbell. From the decree, defendant appeals. Affirmed.

E. S. Finney, for the appellant.

Chase & Dougherty and *A. A. Skeen*, for the appellee.

HURLEY *v.* CHARLES.

Nov. 16, 1911.

[72 S. E. 689.]

1. Deeds (§ 38*)—Description—Sufficiency.—A description in a deed which identifies the land is sufficient.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. §§ 65-79; Dec. Dig. § 38.* 4 Va.-W. Va. Enc. Dig. 398, 399.]

2. Wills (§ 433*) — Probate — Evidence — Records—Certificates.—Code 1904, § 817, authorizes the clerk of the circuit court, with the consent of the court, to appoint one or more deputies, who may discharge any of the official duties of their principal during his continuance in office, unless the duty be one which a deputy is expressly forbidden to perform by law. Section 3334 declares that a copy of a record or paper in the clerk's office of any court, attested by the officer in whose office the same is, may be admitted in evidence in lieu of the original; no special form of certificate being required. A paper writing, offered in evidence as the will of D., was attested only by "A. B. Buchanan, D. Clerk," without stating for whom or of what county he was deputy clerk. The certificate of probate showed that the will was probated in the T. county court, and was from the clerk's office of the T. circuit court, and was attested by "A. B. Buchanan, Deputy Clerk for S. M. Graham, Clerk of the Circuit Court of Tazewell County, Virginia." Held, that the certificate to the will, when construed in connection with the certificate of probate, was sufficient.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 924-936; Dec. Dig. § 433;* Evidence, Cent. Dig. §§ 1321, 1414, 1415. 11 Va.-W. Va. Enc. Dig. 703; 4 id. 772.]

3. Estoppel (§ 38*)—Estoppel by Deed—After-Acquired Title—Covenants.—An after-acquired title by a grantor, who conveys with covenants of special warranty and quiet possession, inures to the benefit of his grantee.

[Ed. Note.—For other cases, see Estoppel, Cent. Dig. §§ 99-107; Dec. Dig. § 38.* 5 Va. W. Va. Enc. Dig. 206, id 214-215.]

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.